

By: Ellis

S.B. No. 662

A BILL TO BE ENTITLED

AN ACT

1
2 relating to electronically recording certain interrogations and
3 the admissibility of certain statements made by a juvenile or a
4 criminal defendant.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

6 SECTION 1. Chapter 2, Code of Criminal Procedure, is
7 amended by adding Article 2.30 to read as follows:

8 Art. 2.30. ELECTRONIC RECORDING OF INTERROGATIONS. (a)
9 Each law enforcement agency in this state shall train peace
10 officers and other employees of the law enforcement agency who
11 interrogate criminal defendants or suspects, including juveniles,
12 concerning the technological aspects of electronically recording
13 interrogations.

14 (b) The Department of Public Safety shall adopt rules for
15 providing funds or electronic recording equipment to law
16 enforcement agencies in this state for the purpose of recording
17 interrogations of criminal defendants or suspects, including
18 juveniles.

19 SECTION 2. Section 2, Article 38.22, Code of Criminal
20 Procedure, is amended to read as follows:

21 Sec. 2. (a) No written statement made by an accused as a
22 result of custodial interrogation is admissible as evidence against
23 the accused [~~him~~] in any criminal proceeding unless:

24 (1) it is shown on the face of the statement that:

1 (A) [~~(a)~~] the accused, prior to making the
2 statement, either received from a magistrate the warning provided
3 in Article 15.17 of this code or received from the person to whom
4 the statement is made a warning that:

5 (i) the accused [~~(1) he~~] has the right to
6 remain silent and not make any statement at all and that any
7 statement the accused [~~he~~] makes may be used against the accused
8 [~~him~~] at [~~his~~] trial;

9 (ii) [~~(2)~~] any statement the accused [~~he~~]
10 makes may be used as evidence against the accused [~~him~~] in court;

11 (iii) the accused [~~(3) he~~] has the right to
12 have a lawyer present to advise the accused [~~him~~] prior to and
13 during any questioning;

14 (iv) [~~(4)~~] if the accused [~~he~~] is unable to
15 employ a lawyer, the accused [~~he~~] has the right to have a lawyer
16 appointed to advise the accused [~~him~~] prior to and during any
17 questioning; and

18 (v) the accused [~~(5) he~~] has the right to
19 terminate the interview at any time; and

20 (B) [~~(b)~~] the accused, prior to and during the
21 making of the statement, knowingly, intelligently, and voluntarily
22 waived the rights set out in the warning prescribed by [~~Subsection~~
23 ~~(a) of~~] this section; and

24 (2) in the case of a criminal proceeding in which the
25 accused is charged with a felony, an electronic recording that
26 complies with the requirements of Section 3(a) is made of the
27 custodial interrogation resulting in the statement.

1 (b) Every electronic recording of a custodial
2 interrogation, if any, resulting in a written statement must be
3 preserved until such time as the defendant's conviction for any
4 offense relating to the statement is final, all direct appeals of
5 the case are exhausted, the time to file a petition for a writ of
6 habeas corpus has expired, or the prosecution of the offense is
7 barred by law.

8 (c) Notwithstanding Subsection (a)(2), a written statement
9 made by an accused as a result of a custodial interrogation is
10 admissible as evidence against the accused in a criminal proceeding
11 if the requirements of Subsection (a)(1) are satisfied with respect
12 to each portion of the written statement that is to be used as
13 evidence. This subsection expires September 1, 2008.

14 SECTION 3. Section 3, Article 38.22, Code of Criminal
15 Procedure, is amended by amending Subsections (a) and (b) and
16 adding Subsection (f) to read as follows:

17 (a) No oral or sign language statement of an accused made as
18 a result of custodial interrogation is [~~shall be~~] admissible
19 against the accused in a criminal proceeding unless:

20 (1) an electronic recording, which may include motion
21 picture, video tape, or other visual recording, is made of the
22 statement and, in the case of a criminal proceeding in which the
23 accused is charged with a felony, the custodial interrogation
24 resulting in the statement;

25 (2) prior to the statement but during the recording
26 the accused is given the warning in [~~Subsection (a) of~~] Section 2(a)
27 [~~2-above~~] and the accused knowingly, intelligently, and voluntarily

1 waives any rights set out in the warning;

2 (3) the recording device was capable of making an
3 accurate recording, the operator was competent, and the recording
4 is substantially accurate and has not been intentionally altered;

5 (4) all voices on the recording are identified; and

6 (5) not later than the 20th day before the date of the
7 proceeding, the attorney representing the defendant is provided
8 with a true, complete, and accurate copy of all recordings of the
9 defendant made under this article.

10 (b) Every electronic recording of any custodial
11 interrogation resulting in an oral or sign language statement, if
12 any, and any statement made by an accused during a custodial
13 interrogation must be preserved until such time as the defendant's
14 conviction for any offense relating to the statement [~~thereto~~] is
15 final, all direct appeals of the case [~~therefrom~~] are exhausted,
16 the time to file a petition requesting a writ of habeas corpus has
17 expired, or the prosecution of such offenses is barred by law.

18 (f) Notwithstanding the requirement of Subsection (a)(1)
19 that in felony cases a recording be made of the custodial
20 interrogation resulting in the statement, an oral or sign language
21 statement made by an accused as a result of a custodial
22 interrogation is admissible as evidence against the accused if the
23 requirements of Subsection (a) are otherwise satisfied with respect
24 to each portion of the oral or sign language statement that is to be
25 used as evidence. This subsection expires September 1, 2008.

26 SECTION 4. Article 38.22, Code of Criminal Procedure, is
27 amended by adding Section 9 to read as follows:

1 Sec. 9. A recording of a custodial interrogation made under
2 Section 2(a)(2) or 3(a) is exempt from required public disclosure
3 under Chapter 552, Government Code.

4 SECTION 5. Section 51.095, Family Code, is amended by
5 amending Subsection (a) and adding Subsections (f), (g), and (h) to
6 read as follows:

7 (a) Notwithstanding Section 51.09, the statement of a child
8 is admissible in evidence in any future proceeding concerning the
9 matter about which the statement was given if:

10 (1) the statement is made in writing under a
11 circumstance described by Subsection (d) and:

12 (A) the statement shows that the child has at
13 some time before the making of the statement received from a
14 magistrate a warning that:

15 (i) the child may remain silent and not make
16 any statement at all and that any statement that the child makes may
17 be used in evidence against the child;

18 (ii) the child has the right to have an
19 attorney present to advise the child either prior to any
20 questioning or during the questioning;

21 (iii) if the child is unable to employ an
22 attorney, the child has the right to have an attorney appointed to
23 counsel with the child before or during any interviews with peace
24 officers or attorneys representing the state; and

25 (iv) the child has the right to terminate
26 the interview at any time;

27 (B) and:

1 (i) the statement must be signed in the
2 presence of a magistrate by the child with no law enforcement
3 officer or prosecuting attorney present, except that a magistrate
4 may require a bailiff or a law enforcement officer if a bailiff is
5 not available to be present if the magistrate determines that the
6 presence of the bailiff or law enforcement officer is necessary for
7 the personal safety of the magistrate or other court personnel,
8 provided that the bailiff or law enforcement officer may not carry a
9 weapon in the presence of the child; and

10 (ii) the magistrate must be fully convinced
11 that the child understands the nature and contents of the statement
12 and that the child is signing the same voluntarily, and if a
13 statement is taken, the magistrate must sign a written statement
14 verifying the foregoing requisites have been met;

15 (C) the child knowingly, intelligently, and
16 voluntarily waives these rights before and during the making of the
17 statement and signs the statement in the presence of a magistrate;
18 [~~and~~]

19 (D) the magistrate certifies that the magistrate
20 has examined the child independent of any law enforcement officer
21 or prosecuting attorney, except as required to ensure the personal
22 safety of the magistrate or other court personnel, and has
23 determined that the child understands the nature and contents of
24 the statement and has knowingly, intelligently, and voluntarily
25 waived these rights; and

26 (E) in the case of a proceeding in which it is
27 alleged that the child engaged in conduct violating a penal law of

1 the grade of felony, the interrogation, if any, of the child
2 resulting in the statement is recorded by an electronic recording
3 device, including a device that records images, and:

4 (i) the recording device is capable of
5 making an accurate recording, the operator of the device is
6 competent to use the device, the recording is substantially
7 accurate, and the recording has not been intentionally altered;

8 (ii) each voice on the recording is
9 identified; and

10 (iii) not later than the 20th day before the
11 date of the proceeding, the attorney representing the child is
12 given a complete and accurate copy of each recording of the child
13 made under this subdivision;

14 (2) the statement is made orally and the child makes a
15 statement of facts or circumstances that are found to be true and
16 tend to establish the child's guilt, such as the finding of secreted
17 or stolen property, or the instrument with which the child states
18 the offense was committed;

19 (3) the statement was res gestae of the delinquent
20 conduct or the conduct indicating a need for supervision or of the
21 arrest;

22 (4) the statement is made:

23 (A) in open court at the child's adjudication
24 hearing;

25 (B) before a grand jury considering a petition,
26 under Section 53.045, that the child engaged in delinquent conduct;

27 or

1 (C) at a preliminary hearing concerning the child
2 held in compliance with this code, other than at a detention hearing
3 under Section 54.01; or

4 (5) the statement is made orally under a circumstance
5 described by Subsection (d) and the statement and, in the case of a
6 proceeding in which it is alleged that the child engaged in conduct
7 violating a penal law of the grade of felony, the interrogation, if
8 any, of the child resulting in the statement is recorded by an
9 electronic recording device, including a device that records
10 images, and:

11 (A) before making the statement, the child is
12 given the warning described by Subdivision (1)(A) by a magistrate,
13 the warning is a part of the recording, and the child knowingly,
14 intelligently, and voluntarily waives each right stated in the
15 warning;

16 (B) the recording device is capable of making an
17 accurate recording, the operator of the device is competent to use
18 the device, the recording is accurate, and the recording has not
19 been altered;

20 (C) each voice on the recording is identified;
21 and

22 (D) not later than the 20th day before the date of
23 the proceeding, the attorney representing the child is given a
24 complete and accurate copy of each recording of the child made under
25 this subdivision.

26 (f) A recording of an interrogation made under Subsection
27 (a)(1) or (a)(5) is exempt from required public disclosure under

1 Chapter 552, Government Code.

2 (g) Notwithstanding the requirements of Subsections
3 (a)(1)(E) and (a)(5) that a recording be made of the interrogation
4 resulting in the statement, a statement that is made in writing or
5 made orally under a circumstance described by Subsection (d) is
6 admissible in any future proceeding concerning the matter about
7 which the statement was given if:

8 (1) concerning a statement that is made in writing,
9 the requirements of Subsections (a)(1)(A)-(D) are satisfied; or

10 (2) concerning a statement made orally, the
11 requirements of Subsection (a)(5) are otherwise satisfied with
12 respect to each portion of the statement that is to be used as
13 evidence.

14 (h) Subsection (g) and this subsection expire September 1,
15 2008.

16 SECTION 6. The Department of Public Safety shall begin
17 adopting rules under Section 2.30(b), Code of Criminal Procedure,
18 as added by this Act, not later than March 1, 2006.

19 SECTION 7. Article 38.22, Code of Criminal Procedure, as
20 amended by this Act, and Section 51.095, Family Code, as amended by
21 this Act, apply to the admissibility of a written, oral, or sign
22 language statement that is made on or after the effective date of
23 this Act. A written, oral, or sign language statement that is made
24 before the effective date of this Act is governed by the law in
25 effect at the time that the statement was made, and that law is
26 continued in effect for that purpose.

27 SECTION 8. This Act takes effect September 1, 2005.